April 20, 2006

STENEHJEM TO SUE TOBACCO COMPANIES

BISMARCK – Attorney General Wayne Stenehjem will sue cigarette companies that have refused to pay more than $2.7 million due to North Dakota under the tobacco Master Settlement Agreement (MSA).

The tobacco companies were to make an annual payment to the states on Monday, April 17, as required by the 1998 settlement between the states and tobacco companies -- but R.J. Reynolds, Lorillard, and several smaller companies instead paid a portion of their payments into a disputed-payment account. Other companies made full payment but claim they are entitled to adjustments to pay less.

“North Dakota is entitled to full payment under the agreement,” Stenehjem said. “We will take whatever steps are necessary to ensure the tobacco companies stand by the agreement and pay in full what they owe to the state.”

Stenehjem said that MSA tobacco manufacturers are justified in reducing their payments only if they can show that states failed to diligently enforce state laws requiring cigarette makers that were not parties to the settlement to make certain payments into escrow accounts. “We have diligently enforced our statute, and I’m confident the court will agree that we have done so,” Stenehjem said. “Then we will ask the court to order tobacco companies to pay every penny due under the agreement and to dismiss claims of other companies that also contend they are entitled to pay less.”

Reynolds and Lorillard paid about $755 million of their overall payment into a disputed-payment account. Philip Morris USA made its full payment -- but has claimed it is entitled to reduce payments. The states received a total of over $5.7 billion from the companies for the April 17 payment, bringing the total paid under the MSA to over $47 billion since 1998. North Dakota has received over $173 million in MSA payments since 1998.

Stenehjem said that if the lawsuits are successful, the state will receive its full payments plus interest.

Background Information - The “NPM” or Non-Participating Manufacturer Adjustment:

Under the Master Settlement Agreement reached in 1998 between states and the “Participating Manufacturers” (now principally Philip Morris USA, Reynolds American, and Lorillard, plus many smaller companies), the Participating Manufacturers are required to make annual payments to the states in perpetuity. But payments are potentially subject to certain adjustments that can increase or decrease total payments, including the “NPM Adjustment.”

Participating manufacturers potentially can reduce their payments under the MSA if their market share of tobacco sales falls by a specified amount compared to their market share before the MSA agreement was executed. That is the provision under which Reynolds and Lorillard paid a portion into a disputed payment account, and others (including Philip Morris USA) are disputing their payment amounts even though they paid in full.

The MSA also provides that no state’s payment may be reduced if the state is found to have “diligently enforced” a state statute that requires other companies that did not sign the agreement (Non-Participating Manufacturers, or NPMs) to make payments as well. NPM payments go into an escrow account, based on tobacco sales, in approximately the same amount per cigarette as the payments required of Participating Manufacturers.

The rationale for state statutes requiring escrow payments by Non-Participating Manufacturers is that companies who sell tobacco products but are not part of the MSA may not be around in, say, 20-25 years, when the harmful health effects of their tobacco products typically might appear. The funds in escrow would be available to meet potential legal obligations the companies could face later. (If there is no legal action or settlement or judgment against an “NPM” after 25 years, the escrow funds could be returned to the company.)

The states collectively received over $5.7 billion this time in MSA payments, but the MSA is primarily a public health agreement. It has strong prohibitions on many forms of advertising, promotion and marketing of cigarettes by the participating manufacturers, and it has led to reduced smoking.